for The Defense

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The Training Newsletter for the Maricopa County Public Defender's Office ⋈ Dean Trebesch, Maricopa County Public Defender

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IMMIGRATION LAW PRINCIPLES FOR CRIMINAL DEFENSE ATTORNEYS

By Tony Colon
Deputy Public Defender - Group B

When an alien[1] is guilty of criminal misconduct within the United States, he or she is most frequently deported under the statute authorizing deportation for crimes that involve the following.

Crimes of Moral Turpitude

Under the Immigration and Naturalization Act (hereinafter "INA") Section 237(a)(2)(A)(I) and (ii), 8 USC Section 1227(a)(2)(A)(I) and (ii); an alien or a legal permanent resident ("green card") is deportable if he:

> Is convicted[2] of a crime involving moral turpitude committed within five years after entry and either sentenced[3] to confinement or confined therefor in a prison or corrective institution, for a year or more, or who at any time after entry is convicted of two crimes involving moral turpitude, not arising out of a single criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial.

Consequently, deportation is prescribed only for aliens who have been convicted of crimes involving moral turpitude, and a distinction is made between aliens who have been convicted for such crimes on one occasion and those who have been convicted twice.

By dividing the elements of the statute into two categories, it becomes more comprehensible.

Convictions for one crime involving moral turpitude:
(1) Committed within five years of entry
(2) Sentenced to confinement for a year involving moral turpitude.
(3) Confined to a prison or institution.

Convictions for two crimes involving moral turpitude:
(1) At any time after entry;
(2) Convicted to two or more crimes or more.
(3) Not arising out of a single scheme of criminal misconduct[4].
(4) Regardless of whether convictions were in a single trial.
(5) Regardless of time of confinement.

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When addressing crimes involving moral turpitude, the greatest difficulty is defining the elusive phrase "crime of moral turpitude." The Board of Immigration Appeals (thereafter "BIA") has defined this abstraction as:

> A crime that refers generally to conduct which is inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties between persons or to society in general...Moral turpitude has been defined as an act which is *per se* morally reprehensible and intrinsically wrong, or *malum in se* so it is the nature of the act itself and not the statutory prohibition of it which renders a crime one of moral turpitude." *Matter of Franklin*, 20 I&N Dec.867, 868 (BIA 1994), aff'd 72 F.3d 571 (8th Cir. 1995).

In determining a crime of moral turpitude, it is the "inherent nature of the crime as defined by statute and interpreted by the courts as limited and described by the record of conviction" and not the facts and circumstances of the particular person's case that determines whether it is a crime of moral turpitude. *Matter of Short*, 20 I&N Dec. 136 (BIA 1989); *Goldeshtein v. INS*, 8 F.3d 645 (9th Cir. 1933). Therefore, practitioners should focus on the elements of the crime and not the details of the criminal conduct. It is not the seriousness of the offense nor the severity of the sentence imposed that determines whether the crime involves moral turpitude. *Matter of Serna* 20 I&N Dec. 579 (BIA 1992). Rather, the crime must be one which is *per se* morally reprehensible and intrinsically wrong or *malum in se, Serna, supra.*

The evaluation of statutes which merely license or regulate and impose criminal liability without regard to evil intent do not involve moral turpitude. *Matter of G-*, 7 I&N Dec. 114, 118 (BIA 1956). Even where a statute requires evil intent, it "is not enough to convert a crime that is not serious into one of moral turpitude." *Rodriguez-Herrera v. INS*, 952 F.3d 230, 241, (9th Cir. 1955). The intent to commit a crime and evil intent are not the same. *Matter of Short, supra; Goldeshtein v. INS, supra.*

"Even where a statute requires evil intent, it 'is not enough to convert a crime that is not serious into one of moral turpitude.'"

Before a person can be deported for having been convicted of a crime of moral turpitude, the statute in question, by its terms, must necessarily involve moral turpitude, *Matter of Esfandiary*, 16 I&N Dec. 659 (BIA 1979); *Matter of Garcia*, 11 I&N Dec. 521 (BIA 1966), or the courts must have interpreted the statute to require moral turpitude. *Matter of Bart*, 20 I&N Dec. 436 (BIA 1992). Finally, the determination of whether a crime is one involving moral turpitude is a matter of law and the court reviews the BIA decision *de novo; Goldeshtein v. INS, supra*

In evaluating whether a crime may be a crime of moral turpitude or not, practitioners have to be aware that:

- The distinction between felonies and misdemeanors is not conclusive upon the question of moral turpitude.
- The length of sentence is not a criterion in assessing turpitude, what is important is whether the crime is labeled as "infamous."
- An attempt or conspiracy to commit a crime of moral turpitude is the same as completing the crime.

Crimes Held to Involve Moral Turpitude

Crimes Against the Person

(A) Involving moral turpitude:

- Murder and voluntary manslaughter; *Carter v. INS*, 90 F3d 14, 18 (1st Cir. 1996).
- Kidnaping; *Matter of C.M*, 9 I&N Dec. 487 (BIA 1961).
- Attempted murder; *Matter of Awaijane*, 14 I&N Dec. 117 (BIA 1972).
- Assault with a deadly weapon; *Matter of Logan*, 17 I&N Dec. 367 (BIA 1980).

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- Aggravated assault; *Pichardo v. INS*, 104 F.3d 756 (5th Cir. 1997).
- Aggravated assault against a police officer; *Matter of Danesh*, 19 I&N Dec. 669 (BIA 1988).
- Child abuse; *Guerrero de Nodahl v. INS*, 407 F.2d 1405 (9th Cir. 1993).
- Spouse abuse; *Grageda v. U.S. INS*, 13 F.3d 919 (9th Cir. 1993).

"An alien or a legal permanent resident is deportable if convicted of an aggravated felony at any time after entry."

(B) Not involving moral turpitude:

- Involuntary manslaughter; *Matter of Lopez*, 13 I&N Dec. 725. Nevertheless, if the statute requires conscious disregard of a substantial risk it is a crime of moral turpitude. *Franklin v. INS*, 72 F.3d 571 (8th Cir. 1995).
- Simple assault and battery; *Matter of S*, 9 I&N Dec. 688 (BIA 1962).
- Assault based on negligence where the reckless or intentional conduct is excluded from the definition; *Matter of Perez-Contreras*, 20 I&N Dec. 615 (BIA 1992).
- Assault where recklessness could be an element but without serious bodily harm; *Matter of Fualaau*, Int Dec # 3285 (BIA 1996).

Sexual offenses:

(A) Involving Moral Turpitude:

- Rape; *Ng Sui Wing v. U.S.*, 46 F.2d 755 (7th Cir. 1994).
- Bigamy; *Matter of E.*, 2 I&N Dec. 328 (BIA 1945).

(B) Not Involving Moral Turpitude:

- Indecency; *Toutounjian v. INS*, 959 F. Supp.. 598 (W.D.N.Y. 1997).
- Prostitution; *Lane v. Tillingshast*, 38 F.2d 231 (1st Cir. 1930).

Crimes against property:

(A) Involving Moral Turpitude:

- Arson; *Matter of S*, 3 I&N Dec. 617 (BIA 1949).
- Forgery; *Robinson v. Day*, 51 F.2d 1022 (2d Cir. 1931).
- Robbery; Burglary; Extortion; *Matter of M*, 3 I&N Dec. 272 (BIA 1948).
- Possession of stolen property (with knowledge it is stolen); *Matter of Serna*, 20 I&N Dec. 579 (BIA 1992).

(B) Not involving moral turpitude:

- Bad checks; *Matter of Zangwill*, 18 I&N Dec. 22, 28 (BIA 1981).
- Criminal damage; *Matter of K-*, 2 I&N Dec. 90 (BIA 1944).

Drug Offenses:

Generally are not crimes of moral turpitude; *Matter of Abreu-Semino*, 12 I&N Dec. 775 (BIA 1968). But, the BIA has determined that possession with the intent to distribute cocaine where knowledge or intent is an element, is a crime of moral turpitude. *Matter of Khourn*, Int. Dec. # 3330 (BIA 1997).

Weapons offenses:

(A) Involving moral turpitude:

- Use of weapons in the course of other crimes may indicate moral turpitude, Matter of Logan, 17 I&N Dec. 367 (BIA 1980).

(B) Not Involving moral turpitude:

- Carrying a concealed weapon, *Matter of Granados*, 16 I&N Dec. 726 (BIA 1979).

Aggravated Felony

An alien or a legal permanent resident is deportable if convicted of an aggravated felony at any time after entry. Aggravated felony is defined under INA Section 101(a)(43), 8 USC Section 1101(a)(43) as:

(1) Murder, rape or sexual abuse of a minor;

(2) Illicit trafficking in a controlled substance as defined in Section 802 of Title 21; including a drug trafficking crime as defined under 18 USC Section 924(c). This provision encompasses both federal and state drug convictions. Where the state conviction encompasses unlawful trading or dealing and is a felony, no reference to federal law is needed. However, when the state conviction is not a felony or is not clearly a felony, it may still be an aggravated felony under federal law. The felony is determined by reference to the federal statue at issue. If the state crime is a felony under federal law and constitutes trafficking under 18 USC

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Section 924 (c)(2) then it is an aggravated felony. A felony under federal law is any offense where the maximum period of incarceration exceeds a year. Thus, a state possession charge may, under certain circumstances, be analogous to a felony under 21 USC Section 844(a) and consequently be an aggravated felony. *U.S. v. Graham*, 927 F. Supp. 619 (W.D.N.Y.). For an example, if under the state law, sale of marijuana is considered a misdemeanor, but it is a felony under federal law, then the offense is considered an aggravated felony. However, when the state treats possession of a drug as a felony, but it is not treated as a felony under federal law, it cannot be an aggravated felony. *Matter of L-G-*, Int. Dec # 3254 (BIA 1995).

(3) *Explosives, Firearms, Arson*: Offenses under 18 USC Section 842(h) of transporting or receipt of stolen explosives and offenses under 18 USC Section 844(d)-(I) are considered aggravated felonies for purposes of immigration law. These include: transporting or receiving explosives to injure persons or destroy property, 18 USC Section 844(d); using telephone or mail to threaten injury to persons or property, 18 USC Section 844(e); using fire and explosives to damage or destroy or attempt to damage and destroy property of U.S. or institutions receiving federal financial assistance, 18 USC Section 844(f); using fire (arson) or an explosive to commit any felony or causing an explosion during the commission of any felony, 18 USC Section 844(h); and damaging or destroying property or attempting to do so by fire (arson) or explosives, 18 USC Section 844(I).

"For an example, if under the state law, sale of marijuana is considered a misdemeanor, but it is a felony under federal law, then the offense is considered an aggravated felony."

(4) *Any crime of violence as defined under 18 USC Section 16*[7]; The BIA definition of crimes of violence includes any offense which is a felony and the nature of the crime as elucidated by the generic elements of the offense is such that its commission would ordinarily present a risk that physical force is used irrespective of whether the risk develops or harm occurs. It does not require specific intent, but only reckless behavior which by its nature involves a substantial risk of physical force. *Matter of Alcantar*, 205 I&N Dec. 801 (BIA 1994). In this case the BIA found that involuntary manslaughter falls into the definition of crime of violence, therefore is an aggravated felony. Also, in *Matter of Magallanes*, Int. Dec.# 3341 (BIA 1998), the Board found that aggravated driving under the influence of intoxicating liquor or drug is considered a crime of violence, consequently is an aggravated felony.

(5) *A theft offense (including receipt of stolen property) or burglary offense,* for which the term of imprisonment imposed is at least one year.

(6) *Child pornography offenses*;

(7) *Prostitution*;

(8) Any attempt or conspiracy to commit any of these previous acts is considered an felony.

Drug Related Offenses

An alien or a legal permanent resident convicted of a violation or conspiracy to violate a law or regulation of a state, relating to a controlled substance as defined in 21 USC Section 802 is deportable. It is not a deportable offense to be convicted of a "single offense involving possession for one's own use of thirty (30) grams or less of marijuana." INA Section 237(a)(2)(B)(I). This exception does not include hashish or other marijuana derivatives. Also, being under the influence of a drug other than marijuana even if it is a misdemeanor may be a deportable offense. *Flores-Arrellano v. INS*, 5 F.3d 360 (9th Cir. 1933). (Conviction for being under the influence of amphetamines is deportable offense). Also the definition of drug related offenses does not include possession of drug paraphernalia.

Firearms Violation

A person is deportable if convicted under any law of purchasing, selling, offering for sale, exchanging, using, owning, possessing or carrying in violation of any law, any

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weapon, part or accessory which is a firearm or destructive device as defined in 18 USC Section 921(a). This includes any attempts and conspiracies to commit such a crime. *Matter of St. John*, Int Dec # 3295 (BIA 1996). Where a criminal statue encompasses offenses that may be, but are not necessarily considered firearm's offenses, it can only be established through the admission of the record of conviction or conviction documents. A police report cannot be used to prove a conviction.

Domestic Violence

An Alien or Legal Permanent Resident convicted at any time after admission for domestic violence, stalking, child abuse and child neglect or child abandonment is deportable. INA Section 237(a)(2)(E), 8 USC Section 1227(a)(2)(E). Section 16 of 18 USC defines violence and includes acts by former as well as current spouse, formerly cohabitating, by a person similarly situated to a spouse, or by any other individual against a person who is protected from that person's acts under federal, state, tribal or local government law.

"Deportation is a measure comparable to a traditional criminal conviction in terms of its potential for drastically disrupting the life of the affected person."

Conclusion

Deportation is a measure comparable to a traditional criminal conviction in terms of its potential for drastically disrupting the life of the affected person. Most importantly, an alien's vulnerability to deportation may often be dependent upon the outcome of a criminal case. Yet, criminal practitioners, because they are too often unaware of the deportation implications of criminal case dispositions (indeed, sometimes even unaware of their client's alien status), neglect to pursue available channels. Criminal lawyers do not need to be steeped in all the intricacies of immigration law to avoid deportation issues. Nevertheless, an understanding of the extent to which certain convictions, sentences, and sentencing techniques can mandate, authorize, or ameliorate deportation would seem essential to effective practice. I hope that this article has given a better awareness of those essential principles of immigration law. ■

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1. The term "alien" is defined by the Immigration and Nationality Act as: "Any person not a citizen or national of the United States" 8 USC Section 1101 (a) (3) (1971). The statutory definition includes persons who have not been naturalized, as well as those who have been citizens of the United States but who have lost their citizenship through expatriation or denaturalization.

2. A conviction exists where there has been a formal judgment of guilt entered by a court or if adjudication has been withheld, where all the following elements are present: A judge or jury has found the alien guilty, or the person entered a plea of guilty or nolo contendre and the judge has ordered some form of punishment, penalty or restraint on the person's liberty to be imposed. INA Section 101(a)(48)(A). Once a person is convicted the immigration judge will generally not look behind the conviction. *Matter of Short*, 20 I&N Dec. 136 (BIA 1989). A conviction will be deemed effective for immigration purposes only when it is based on the finality of a state of federal court procedure. *Pino v. Landon*, 399 U.S. 901 (1955). Post conviction remedies do not affect the finality of conviction for immigration purposes. *Morales-Alvarado v. INS*, 655 F.2d 172 (9th Cir. 1989). Nevertheless, a conviction vacated or overturned is an appropriate basis for reopening deportation proceedings. *DeFaria v. INS*, 13 F.3d 422, 423 (1st Cir. 1994).

3. Under Immigration law, any reference to a term of imprisonment or sentence is any time of incarceration or confinement ordered by a court, even if the time is suspended or the execution is withheld. INA Section 101(a)(48)(B).

4. The government has the burden of proving that the two separate offenses were not part of a single scheme. *Wood v. Hoy*, 266 F.2d 825 (9th Cir. 1959). Also, the government has the burden of proof that both crimes were crimes involving moral turpitude. *Hamdam v. INS*, 98 F.3d. 183 (5th Cir. 1996),

5. *Gonzales v. Barber*, 207 F.2d 398 (9th Cir), aff'd 347 U.S. 637 91953.

6. *United States v. Carrollo*, 30 F.Supp.3 (W.D. Mo. 1939).

7. Section 16 of title USC defines a "crime of violence" as:
(a) an offense that has as an element that the use, attempted use, or threatened use of physical force against the person of another may be used in the course of committing the offense.
(b) any offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

MANAGING THE TRAFFIC JAM: Who Is Responsible for Sequencing Trials?

By Donna Lee Elm
Trial Group Supervisor - Group D

Grant raised the challenge: *Go To Trial!*[1] But whether we want to be in trial or not, due to the County Attorney's plea deadlines and the Court's "Rush to Justice," more cases are speeding into trial than seasoned practitioners can remember. As a result, attorneys are stacking up trials like planes circling O'Hare Airport, waiting to land. One PD just finished two back-to-back trials, the third is imminent, and a fourth will be a short bench trial in the middle of the third. It is no longer remarkable for a lawyer to have multiple trials awaiting placement.

One problem practitioners encounter is lack of an air traffic controller. Some judges are ordering lawyers to land their planes without regard to the lawyers' other commitments or to other planes circling. Attorneys in Case Transfer (having witnesses on call, clients taking time off work, and evidence fresh in their minds) have occasionally been ordered to preempt pending trials and start others. Their protests are not always effective.

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We should remember that this is really not the lawyers' problem, but the judges'. There are rules already in place directing the court in sequencing trials. We are familiar with Rule 8.1, Ariz. R. Crim. P., "Priorities in Scheduling Criminal Cases." It includes the priority for in-custody defendants. It may surprise you to learn that it does *not* include any age distinction (*i.e.*, lower cause number cases take precedence over higher ones), though that is a well-ingrained practice here. The other thing it includes is reference to resolving scheduling conflicts by resort to Rule 5(j) of the Uniform Rules of Practice.

The Uniform Rules are a set of procedural rules different from and supplementing the Rules of Criminal Procedure. The Criminal Procedure Rules were drawn up by the Supreme Court and apply to every court in the state; the Uniform Rules, on the other hand, were drawn up by superior courts, and apply just to those courts throughout the state. They can be found in 17B A.R.S., in the Miscellaneous Rules volume.

Rule 5(j) addresses resolving scheduling conflicts between courts. It provides:

> (1) Upon learning of a scheduling conflict, ... counsel has a duty to promptly notify the judges and other counsel involved in order that the conflict may be resolved.
> (2) Upon being advised of a scheduling conflict, *the judges* involved shall, if necessary, confer personally or by telephone in an effort to resolve the conflict. [Emphasis supplied]

Note that an attorney's obligation ends with promptly informing all concerned about the problem. Thereafter, the onus is placed on the two affected judges to communicate to resolve the conflict. Hence simply ordering lawyers to proceed would violate Uniform Rule 5(j). Rather, judges are required to contact each other to decide priorities of trials.

What factors should they consider? Those, too, can be found in Uniform Rule 5(j)(2):

(A) the nature of the cases as civil or criminal;
(B) the length, urgency, or relative importance of the matters;
(C) a case which involves out-of-town witnesses, parties, or counsel;
(D) the age of the cases;
(E) the matter which was set first;
(F) any priority granted by rule or statute;
(G) any other pertinent factor.

"The 'Rush to Justice' is already creating serious traffic jams in scheduling trials."

Because the judges reaching these scheduling decisions must apply those factors, lawyers should be prepared to discuss the weight of various factors with both judges when alerting them to the scheduling conflict. Surely judges will apply Uniform Rule 5(j) in resolving trial scheduling, but it might help if counsel reminds them about Rule 5(j)'s directives. It is then up to the judges to function as air traffic controllers in resolving trial priorities.

The "Rush to Justice" is already creating serious traffic jams in scheduling trials. It needs regular inter-division communication to resolve conflicts. We should be mindful of Uniform Rule 5(j), and point it out to judges when advising them of conflicts. This could bring some organization to a burgeoning chaotic bottleneck, and help us plan and schedule trials with greater predictability. ■

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1. Incidentally, Group D's motto is the less exuberant, but more existential: *Trials Are Good.*

THE TRUTH ABOUT DUI AFFIRMATIVE DEFENSE

By Tammy Wray
Deputy Public Defender - DUI Unit

Armed with dubious anecdotes and coordinated publicity packets, prosecutors and the law enforcement community have misled the public and the legislature about an accused's ability to beat a charge of per se impaired driving. According to the Arizona Republic's front page story on January 29, 1999, "Law Lets You Beat DUI- Impaired Drivers are Using a Legal Loophole to Avoid DUI Convictions," and a February 9, 1999 editorial, "DUI Loophole Needs to be Corked," prosecutors in Mesa and Flagstaff are saying they lose 50% of their DUI cases to the affirmative defense. This statistic is both misleading and inaccurate. In order to understand where it came from, it is necessary to understand how a DUI case arises.

When a police officer has probable cause to believe that a driver is impaired, either by alcohol or drugs, the driver is arrested for DUI. The driver is then asked to submit to a chemical test of either breath, blood, or urine to determine his body's alcohol or drug content. In some cases, there is no chemical test, either because the driver has refused the test and the police officer does not seek a search warrant, or because, for some reason, the testing equipment is not working or unavailable. The

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driver also routinely answers a detailed set of questions by the police officer designed to pin down a specific drinking or drug use history.

At the conclusion of the officer's investigation, the case is presented to the charging agency, usually a county or city prosecutor. The case can then be charged with one to three different allegations:

1. The driver was "under the influence" of alcohol, drugs, or any toxic substance (DUI impairment),
2. The driver had an alcohol concentration (BAC) of .10 or more within two hours of driving (DUI BAC), or
3. The driver had any illegal drug or its metabolite in his system, regardless of whether he was under its influence (DUI drugs).

Regardless if an accused is convicted of one, two, or all three of these allegations, the punishment will be exactly the same. In other words, the prosecution only has to prove one out of three to get a good conviction.

The affirmative defense now being considered for repeal by the legislature applies only to number two, DUI BAC. Under the law as it currently written, the state is only required to show that an accused's BAC was .10% or more within two hours of driving. In other words, the arresting officer has two hours in which to offer an arrested person a chemical test or obtain a search warrant if the person is uncooperative. If the test, at any time within that two hour period, shows a BAC of .10% or more, then the person will be charged with DUI BAC.[1] The affirmative defense provides that if an accused can show at trial that his actual BAC *at the time of driving* was below .10%, then the jury or the court may find him not guilty of the DUI BAC charge.

Whenever an individual is charged with DUI BAC, he is *always* charged with DUI impairment as well. In cases that involve alcohol use, but no chemical test, only DUI impairment will be charged. Only in the cases where a chemical test shows the presence of illegal drugs will DUI drugs be charged.

Most DUI cases that are prosecuted are somehow resolved short of trial. About 95% are resolved by plea bargain,[2] and a very small portion are dismissed on legal grounds. Of the remaining handful that actually proceed to trial, about one third do not involve the affirmative defense at all. These are cases that are charged only as DUI drugs, do not involve any chemical test, or where the BAC is so high or the drinking history so inconsistent, that the affirmative defense cannot be of any practical use.

Of the few remaining cases, the affirmative defense is successful 50% of the time, *but only on the DUI BAC charge*. The significance of this "50%" is further diminished by the fact that even when an accused is found not guilty of DUI BAC, he is often still convicted of the DUI impairment charge,[3] and thus actually receives the same punishment as if he had been convicted on both charges.

The affirmative defense as it now stands simply involves the use of expert testimony, very often the state's own expert, to establish that an accused's BAC was lower at the time of driving than at the time of the chemical test. It is based on the scientifically and biologically sound principle that it can take from 30 minutes to 2 hours for a drink to be fully absorbed by the body. The defense is not and cannot be of use unless there is a BAC reading that is very close to .10% and a consistent drinking history is reported at the time of arrest.

"In at least two states where legislatures had enacted laws to prevent an accused from presenting this type of evidence, the statutes were thrown out as unconstitutional."

The use of this type of evidence to establish a person's BAC at the time of driving is not unique to Arizona. Almost all states use it, and most require it, to ensure that people are not punished for driving at a time when their BAC was actually below the legal limit. In at least two states where legislatures had enacted laws to prevent an accused from presenting this type of evidence, the statutes were thrown out as unconstitutional.

Another "statistic" that has recently been bandied about, is that Arizona is the only state that has this type of affirmative DUI defense. This is true, but only because the DUI laws in most states are written with reference only to the time of driving, not to within 2 hours of driving. As with most states, Arizona would have no need for the defense if the DUI laws here really prohibited only what they purport to, that is, *driving* under the influence.

Accordingly, this DUI "loophole" is not actually a loophole. It is a legitimate and relevant defense for individuals who were not actually driving with a BAC over the legal limit. It is used in an extremely limited number of cases and should be left as it is written. ■

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1. If the chemical test is given more than two hours after driving, the prosecution can then present what is called "relation back testimony." Using the same principles of alcohol absorption and elimination that are used in by an accused in presenting the affirmative defense, the prosecutor can "relate back" the accused's BAC to within two hours of driving.
2. Judge Noel Fidel of Division One of the Arizona Court of Appeals

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recently stated that, "Plea bargains are entered in 95% of the criminal cases in Maricopa County and in comparably high percentages elsewhere in the state." *State v. Miller*, CR98-0153 (filed February 9, 1999).

3. Every knowledgeable and reliable forensic alcohol expert, whether presented by the prosecutor or an accused, will testify that every person, regardless of alcohol tolerance, is impaired or "under the influence," when he reaches a BAC of .08%.

SUGGESTIONS FOR RESOLVING COMMON PLEA CUT-OFF PROBLEMS

The judges of the Criminal Department of the Maricopa County Superior Court have offered the following suggestions of ways to handle some common problems being posed by the County Attorney's plea cutoff policies.

Resolving Discovery Problems by Phone

The Problem: A witness who must be interviewed prior to the plea cutoff deadline will not return phone calls, or will otherwise not cooperate in the setting of an interview. You can file a motion for deposition, or prepare a stipulated order for deposition, but either option takes a substantial amount of time.

"Plea cutoff deadlines make it very difficult, if not impossible, to prepare and litigate substantive motions in time for the client to make an informed decision on a plea offer before it expires."

Suggested Solution: The judges suggest that the attorneys set up a conference call with the judge. The judge can issue a minute entry, on the spot, ordering the witness to appear for deposition at a time and place agreed to by the attorneys. The attorney who wants the interview can then immediately prepare and serve a subpoena on the witness, saving a great deal of time and effort. It is believed that all of the judges are willing to do this.

Expedited Motion Hearings

The Problem: Plea cutoff deadlines make it very difficult, if not impossible, to prepare and litigate substantive motions in time for the client to make an informed decision on a plea offer before it expires. It takes time to investigate grounds for motions, research the law, prepare the motions, file them, wait the appropriate time for response by the prosecution, reply to the response, if necessary, set the motion for hearing, conduct the hearing, and, often, wait for a ruling.

Suggested Solution: While the court cannot do anything about the time it takes to research, prepare and file motions, it can do something about getting motions heard in an expedited manner. If the assigned judge is not able to hear a motion prior to the plea cutoff deadline, Judges Kaufman, Reinstein (Ron), and Martin will do so. They will handle motions to suppress and other limiting and potentially dispositive motions. In addition, Judge Colin Campbell has volunteered to hear disputed discovery motions, when the assigned judge cannot, in an expedited manner. ■

THE POWER OF LISTENING

By Lisa Kula
Training Administrator

Speaking is an important aspect of a lawyer's trade. There is no disputing that in most cases, the most effective advocates are the ones who can tell a convincing story or explain the case to the jury. Because of the emphasis on verbal ability, many attorneys fail to develop the skills on the other end of the communication equation, listening. You may consider yourself to be a good listener, or at least average. Research shows that after hearing a ten minute presentation, the average listener hears, comprehends, and retains only about fifty percent of the message. After 48 hours, most listeners can remember only about twenty-five percent of what they heard.[1] In a profession where success can hinge on the smallest detail, improving listening comprehension is crucial. This is especially important in your consultations with clients. When your tenth client of the day comes in to tell you what happened, and how his mother can corroborate the story, is your antenna still out? This article will help you to understand what it takes to be an effective listener, and some simple methods for improving your listening skills.

The importance of listening skills can be seen in the breakdown of our daily communication activities. In a typical day we spend 16% of our time speaking, 14% writing, 17% reading and 53% listening. So if the largest amount of communication activities is devoted to listening, why aren't we better at it? One major roadblock is speed. The speech rate of a typical conversation is between 125 - 150 words per minute. However, we are capable of processing familiar language at a rate as high as 600 words per minute. No one talks that fast except for the guy in those commercials. This differential creates a "mental down time" which can be filled with distracting thoughts. To overcome this natural tendency of a mind to wander, it is important to understand the steps in the listening process.

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The four steps are: 1) Attending 2) Understanding 3) Responding and 4) Remembering.

The first step is attending. In other words, paying attention. There is a vast difference between listening and hearing. Listening is an active process, one that takes energy and involvement. Hearing, or non-listening, is passive. It allows the sound waves to just float around in your head. A perfect example is when you are stuck in traffic, waiting for the traffic report so you can better plan your route. In the meantime, your mind is racing with all the things you need to do or should have done. You, of course, miss the report because you where thinking about something else, and have just experienced non-listening. There are many types of non-listening and chances are you have fallen victim to one or two. Chief among the non-listening strategies is psuedolistening, better known as faking attention. Don't engage in this farce as it is a waste of everybody's time. If you truly do not have time to listen, let the person know and reschedule a better time. Another frequent listening barrier is stage-hogging. Stage-hogging occurs when the receiver turns the conversation to him/herself, interrupts, or generally prevents the speaker from completing their message. If you find yourself doing this, stop and reassess *why* you're having this conversation. Refocus your attention on the speaker's message. The final two problems, selective listening and insulated listening, may be very familiar to you, especially if you have children. Selective listening is tuning into only the parts the listener finds interesting. The corollary is the insulated listener, who ignores the parts they don't want to hear. Effective listening requires attention to the whole message, and that requires energy. Let's face it, after a tough day, it's hard to focus and summon the energy to be a good listener. How do you combat that? Become a selfish listener. A selfish listener creates a reason to listen. They listen intently for "what's in it for me". That may be as simple as a piece of factual information, or maybe a window of understanding into your client.

"One of the greatest interferences to good listening happens when people start formulating their response before the other person has finished speaking."

The second step in the listening process is understanding. Our attempts to understand and interpret the world around us is filtered through our perceptual sieves. Our needs, interests, and desires can all influence the meanings we apply to what we hear. Other factors that influence how we perceive are gender, education, culture, and past experience. It is important to set our sieves aside, and gain our understanding using the speaker's perceptual sieves. This leads to empathetic listening. Empathetic listening involves integrating all aspects of the speakers experiences, putting yourself in their shoes. It involves listening to both the intellectual and emotional messages. Empathetic listening doesn't mean you have to agree with the speaker, just understand where they are coming from. Once you can appreciate their point of view, you can move into deliberative listening. Deliberative listening occurs when there is a deliberate attempt to hear information, analyze it, recall it at a later time, and draw conclusions from it.[2] Both modes of listening need to be employed if the greatest level of understanding is to be achieved.

Although the third step, responding, may not seem to be part of the listening process, it is crucial. Your response to the speaker demonstrates how well you listened to the whole message. If you would like to provide meaningful feedback you must be prepared to provide it to the speaker. Preparation starts by making the transition from listener to speaker. This transition can only begin *after* the other person has completed their message. Then you can begin to formulate your response. One of the greatest interferences to good listening happens when people start formulating their response before the other person has finished speaking. With the transition from listener to speaker complete, you can now provide meaningful feedback. This does not mean using the awful canned, insincere response of "I hear what you're saying." Paraphrase and ask questions which demonstrate to the speaker you have heard their message. Make the feedback prompt and accurate. React to the message, not the speaker.

The final step in the process is remembering. This skill is particularly vulnerable given the hectic pace of the workday. The best way to overcome the hurdle of a stress filled day and remember something is to write it down or take notes. That may not always be possible, so you can rely on other useful devises. Repetition is one of the easiest ways to remember something. Repeat anything three or four times, and it is much more likely to stick. However, repetition should occur smoothly within the context of a conversation. Take for example, being introduced to your client and wanting to remember his name. You are not going to say "Hello, Joe, Joe, Joe, Joe" (he might think you have a skip and wack you on the side of the head). It is better and more natural to say it a few times in the course of conversation, such as "Nice to meet you Joe", "Now Joe, tell me what happened." etc. You can also use some of your "mental down time" to repeat in your head the speakers name, message, or main points. Use mnemonic devises such as acronyms or mental images to bolster your memory.

Unfortunately, the only way to improve your listening skills is to practice them. Listening skills are like a muscle, they need to be exercised. One of the best ways

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to exercise this muscle is to put yourself in difficult listening situations. These would include listening to subject matter you find difficult to understand, listening to something you perceive as boring, or listening to someone you don't like. Another key in improving this skill is to monitor the way you listen. Make sure you are concentrating on the message and suspend judgment until the message is complete. Don't tolerate distractions. If it is noisy in the hallway close your door, turn down your radio, and turn off your phone. Eliminating these distractions will make it easier for you to pay attention to the speaker. Becoming a good listener will help to build better relationships with your clients, and improve the quality of your work. At the very least, it will make you quite popular at parties. ■

"Becoming a good listener will help to build better relationships with your clients, and improve the quality of your work."

1. Verderber, Rudolph F., *(1994) The Challenge of Effective Speaking*, 9th ed. Belmont, CA, Wadsworth Publishing.
2. Weaver, Richard L., (1993) *Understanding Interpersonal Communications*, 6th ed., New York, Harper Collins.

ARIZONA ADVANCE REPORTS

By Terry Adams
Deputy Public Defender - Appeals

***State v. Clark*, 287 Ariz. Adv. Rep. 7 (CA 1, 1/19/99)**

This is an appellate procedure case that concludes that the current procedure followed in Arizona for deciding non-meritorious appeals fully complies with the requirements of *Anders v. California*. The court refused to follow a recent Ninth Circuit case, *Robbins v. Smith*, that requires counsel to set forth arguable issues in the brief.

State v. Haley, 287 Ariz. Adv. Rep. 3 (CA 2, 8/19/98)

The defendant was charged with murder. Prior to the event he made a statement to his sister. The state called his sister in rebuttal to testify regarding this, but, did not disclose it to the defense. The defendant's objection was overruled because Rule 15.1 requires the state to disclose names of rebuttal witnesses along with any written or recorded statements, and since the statement was not written or recorded, no violation. The state had disclosed the sister as a rebuttal witness. The defendant also objected to the premeditation instruction that used the words "long enough to permit reflection" rather than language that required a finding of actual reflection. The court found no error, reasoning that the statute only requires the formation of intent to kill, and need only precede the killing by a sufficient length of time for the act to be premeditated. Nothing in the statute requires that the defendant must actually reflect before he acts. This is in contrast to Division One's holding in *State v Ramirez*. Stay tuned for the Supreme Court's probable resolution of this conflict.

***State v. Soto*, 287 Ariz. Adv. Rep. 58 (CA 1, 1/28/99)**

Based on information obtained from a confidential informant, the police had a house under surveillance believing it contained drugs. As one officer was obtaining a search warrant another secured the premises by entering. An officer in the back yard smelled an odor of marijuana coming from an unlocked shed, which he opened and discovered the pot. The trial court suppressed the evidence based on an illegal search. The court reversed, finding that the entry and search were indeed unlawful, however, since a warrant was simultaneously obtained, and since it was obtained from an independent source not tainted by any information obtained during the illegal entry, the independent source doctrine applied and the seizure was valid.

***Beijer v. Adams*, 288 Ariz. Adv. Rep. 53 (1CA, 2/9/99)**

The defendant's car was searched and revealed drugs. During trial the D.P.S. officer testified without objection to evidence of drug courier profile. During trial and after this testimony, defense counsel became aware of the Arizona Supreme Court's recent decision in *State v. Lee* that prohibits this type of testimony. He moved for a mistrial which was granted. He then moved to bar retrial on the grounds that the state had engaged in intentional misconduct. The court denied that motion, this special action followed. The court upheld the trial court, finding that the prosecutor was aware of *Lee*, however, because the precise parameters of *Lee* are subject to interpretation and the trial court was in the best position to evaluate the prosecutor's explanation of his conduct, the matter could be retried.

***State v. Miller*, 288 Ariz. Adv. Rep. 48 (CA 1, 2/9/99)**

The defendant was charged with several aggravated DUI's, he was offered a plea which he refused. Prior to trial a judge not assigned to try the case participated in a "settlement conference" with the defendant and counsel. The defendant still refused the plea and the trial was presided over by the same judge. At the time rule 17.4(a) prohibited judges from participating in plea negotiations. Although there was no objection to this procedure at trial, on appeal the defendant argued that the judge erred in participating in the plea negotiations and he committed fundamental error by presiding at the trial. The

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court found fundamental error on both counts. In 1997, after the trial proceedings in this case, the prohibition of rule 17.4(a) was lifted under an experimental rule allowing judges to participate in settlement discussions. The court did not hold that under the new rule it is *per se* error for the settlement conference judge to sit at the trial. However, if you want the same judge, your client should make an express waiver. Conversely, if you don't want the same judge, you should object. The state has filed a petition for review in the Supreme Court.

***Stare v. Sharp*, 288 Ariz. Adv. Rep. 36 (S CT 1/29/99)**

The defendant was staying at a motel in Wilcox, Arizona. After a night of drinking he called the female manager of the motel and requested more towels. When she arrived he held her against her will, beat her, stripped her, raped her, and ultimately killed her. Her son heard screams coming from the room and called the police. The police knocked repeatedly on the door and called on the phone but received no answer. The son gave them the keys to the room. After calling their sergeant, who told them to enter the room, they did. There was a delay of about forty minutes between their arrival and the entry. They discovered the victim and the defendant who was passed out. On appeal the warrantless entry and search were challenged. The court upheld it based on the emergency aid exception to the warrant requirement. The delay itself did not bar reliance on the exception under the circumstances. This was a capital case where the court upheld the death sentence.

***State v. Vigil*, 288 Ariz. Adv. Rep. 45 (CA 1, 2/2/99)**

The defendant was convicted of drive by shooting, a class 2 dangerous felony. The victims were his sometime girlfriend and her mother. Both victims were standing in the driveway when the defendant allegedly drove by and fired a gun from about 30 feet. Neither victim saw a gun, one said she saw sparks coming from the car and heard bullets hit the house. No bullets, casings or impact marks were found. The prosecution sought to introduce evidence of two other occasions where the defendant allegedly came by the house and one time threw a rock through the window and the other time threw a beer can. The state wanted to use this to show "a pattern of harassment". The court allowed it to show identity and motive. The court of appeals reversed, finding that identity and motive were never issues, and this type of evidence to show a pattern of behavior is precisely what the Supreme Court's recent decision of *State v. Ives* prohibits. The court also found that the trial court did not conduct a weighing process to determine if the prejudice created was outweighed by any probative value as required by rule 403. Also under the facts of this case the admission of this evidence was not harmless error. ■

SELECTED 9TH CIRCUIT OPINIONS

By Louise Stark
Deputy Public Defender - Appeals

***Caro v. Calderon*, 165 F.3d 1223 (9th Cir. (Cal.) 1999)**

This death penalty defendant wins remand to the trial court for an evidentiary hearing on ineffective assistance of counsel at sentencing. At the original sentencing numerous witnesses testified that Caro was a victim of physical abuse, serious injuries and living conditions that amounted to neglect or abuse. This information was not fully disclosed to the experts used at sentencing, who would have used it to testify more forcefully about Caro's mental capacity. No experts were engaged to research and explain to the jury the effects of the toxic substances which Caro had been drenched in, inhaled, and ingested from childhood on. This opinion suggests that the lawyer failed to adequately investigate and use this history (and experts) including the exposure to neurotoxic chemicals, some of which are now known to cause unexplained aggressive behavior. The dissent argues that any lack of information to the experts, or failure to obtain others was the fault of the doctors already involved in the defense. It also suggests that the expertise regarding chemical exposure may not have existed or been commonly known at the time of the sentencing. The dissent concludes even if the lawyer was ineffective, no prejudice exists because the newly alleged theories wouldn't have made a difference in the sentence. This conclusion is reached based on the facts of the crimes and Caro's admissible prior criminal history.

***United States v. Sanchez-Lima*, 161 F.3d 545 (9th Cir. (Cal.) 1998)**

The defendant was charged with assaulting a Border Patrol agent who was one of several who intercepted the defendant and others entering the U.S. illegally. The defense showed that the defendant ran away from the initial approach of the agents, and was beaten up for it. When he heard agents in the brush, he feared another beating, and acted out of that fear in hitting the agent. Upon arrest the aliens were interviewed, apparently under oath, and videotaped by Border Patrol the same day. Testimony of several arrestees at the grand jury supported self defense to some extent. The witnesses were deported, but were willing to be deposed in Mexico. The trial court denied the defense motions for depositions and refused to admit the sworn, videotaped statements under the "catchall exception" to the hearsay rules. The refusal combined with denial of depositions was reversible error that denied defendant of his 6th Amendment right to confront witnesses.

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There was some evidence at trial that one agent lied on the stand. It was also abuse of discretion and reversible error to allow, over objection, one of the agents to testify as to the truthfulness of another witness. This was inadmissible opinion evidence of credibility in a case where the character of the witness for truthfulness was not an issue. Erroneous jury instructions which failed to make clear the government's burden of disproving self-defense beyond a reasonable doubt, were reversible error.

***United States v. Neill*, 166 F.3d 943 (9th Circ. (Or.) 1999)**

Neill and the codefendant both lived in a work release center. They were charged with committing two bank robberies. Part of the proof involved their acquaintance with each other, a sign-out log at the center showing when Neill was there, and his possession of sufficient cash to pay a fine at the work release center. Neill moved to preclude description of the place as a work release center because it implied prior crimes, but the motion was denied. This court finds the denial of that motion was error, i.e. an abuse of discretion where prejudice clearly outweighed probative value, and the witnesses could refer to the center as a residential program. But the error was harmless, where Neill's prior convictions and crimes were not mentioned, except in giving a cautionary instruction to the jury prohibiting speculation on why Neill was on work release, and evidence of guilt was overwhelming. The court also found pepper spray to be a dangerous weapon capable of inflicting serious bodily injury based on the civilian witness who felt its effects, although police who routinely use it, testified it was not. This finding pushed the defendant's sentence into a more punitive range.

***United States v. Foster*, 165 F.3d 689 (9th Cir. 1999)**

This case is related to the opinion at 133 F.3d 704 (9th Cir. 1998) in which this court held that a gun in the bed of a pickup truck was not "carried" during and in relation to a drug offense. The Supreme Court vacated that holding in *United States v. Foster*, 119 S.Ct. 32 (1998). Now the issue on remand is whether there was sufficient evidence to prove the "carried" element. At trial Foster had focused on disputing that the gun had a relationship to possession of drugs. Only on appeal did the meaning of "carry" become critical, until the Supreme Court determined that one "carries" a firearm in relation to drug trafficking even when it is in a locked glove box, or trunk. See *Muscarello v. United States*, 118 S.Ct. 1911 (1998). Because it was uncontested, and admitted that Foster knowingly transported the gun in the bed of the truck, he was properly convicted, despite arguing that he routinely carried the gun when heading to the mountains, in case of snakes, and that he was not carrying it due to any intention or involvement with the drugs found.

***Vansickel v. White*, 166 F.3d 953 (9th Cir. (Cal.) 1999)**

The murder victim's body was found in a car crash, with a gunshot to the head at close range. The defendant fled from the scene, possessed the murder weapon, which he fired when police arrived, and made up a story to explain all this. He admitted guilt to his girlfriend and in letters seized before trial. He also admitted guilt at trial. Neither his lawyer nor the trial judge knew that they were using only half of the allowed peremptory strikes at voir dire. This mistake was found by the judge after conviction and before sentencing. It was established that the defense would have used additional peremptories if they'd known more were allowed. In postconviction state proceedings he raised this error, but was unsuccessful due to lack of any timely objection, and lack of prejudice from the error. This court also holds that federal due process rights were violated when the defendant was denied the peremptory challenges guaranteed him by state law, but because of the failure to object in a timely fashion, he must show prejudice from the error. Any error was harmless because of the overwhelming evidence of guilt. ■

BULLETIN BOARD

New Attorneys

Art Merchant joined Group D on March 22. He had been with the County Attorney's office since 1992.

Nine new attorneys will be members of Russ Born's "Class of April 1999" New Attorney training. They are:

Kristi Adams is a 1997 University of North Dakota School of Law graduate. She attended the University of Phoenix where she received her B.A. in Management. While in law school, she served as a law clerk for various firms, and has handled criminal matters since her admission to the Bar.

Brandon Cotto started with the office as a Law Clerk for Group A in June of 1998. His J.D. is from the New York Law School and his B.A. in Criminal Justice is from Florida Atlantic University.

Michael Eskander has been serving as a law clerk for Group C since July of 1998. Before then, he worked in our Initial Services Unit. He received his LL.M. from the University of Iowa College of Law. He also holds a LL.B. in Law from the University of Ein Shams in Cairo, Egypt. He is admitted to the Bar in Egypt and Iowa.

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Maurice D. "Danny" Evans attended Florida State University College of Law where he was a member of the Student Trial Lawyers Association. He holds a Master's degree in Athletic Administration/Physical Education from Adelphi University as well as a B.S. in Physical Education from Indiana University.

Karen Jolley has been serving as a law clerk for our Juvenile Division since December of 1997. She earned her B.S. in Justice Studies from ASU then continued on to ASU College of Law for her J.D.

Robert Lerman is a law graduate of Capital University Law School in Ohio and has been employed with civil practice law firms since his Bar admission in 1995.

Jeff Mehrens attended ASU College of Law after obtaining his Master's degree in Philosophy from there. He has worked as an adjunct professor of Philosophy at Glendale Community College since 1996.

Rodney Mitchell is a graduate of ASU College of Law. He attended the U.S. Naval Academy where he received his B.S. in Political Science. He has been a law clerk for Group B since June of 1998.

Janis Pelletier has served as a law clerk for Group D since January. She is a graduate of the ASU College of Law and holds a B.S. in Computer Information Systems from North Carolina's Wesleyan College.

Attorney Moves/Changes

Marci Hoff will be relocating to Wyoming where she will work for the Attorney General's office. She will be leaving the office on April 9. She has been a member of Group D since 1995.

Christine Israel, Group C attorney, will be leaving the office effective April 30. She began with the office in 1995. She is relocating to San Diego.

Judy Lutgring will be leaving Group C on April 16. She has accepted a position with Cochise County Public Defender's office and will be moving to Bisbee.

Pat Ramirez is leaving Group A on April 2, but will continue to work in a temporary capacity with the office through May.

Jeanne Steiner left Group D on March 12. She began her career with the office in 1991. She is leaving to devote herself to full-time motherhood.

New Support Staff

Karla Carranza began as an Office Aide in Group B on March 10.

Velia Ceballos rejoined the office on March 22. She will be providing legal secretary support in Group B. Welcome back!

Esther Chavez, Assistant Trainee in Appeals, joined the office on March 8.

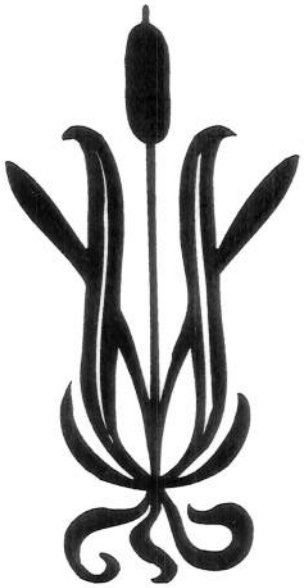
Matt Elm also returned to the office on February 23. He will work part-time as an office aide in Group B.

Support Staff Moves/Changes

Carmen Black, Administrative Assistant in Appeals, left the office on March 12.

Joyce Geller, Secretary at Durango, left the office on February 12.

Cruzita Lucero, Legal Secretary, left the office on March 5. She had been a member of Group B since 1995. ■



February 1999
Jury and Bench Trials

Group A

Dates: Start-Finish	**Attorney** Investigator *Litigation Assistant*	Judge	Prosecutor	CR # and Charge(s)	Result: w/ hung jury, # of votes for not guilty/guilty	Bench or Jury Trial
2/1-2/3	**Lehner**	Martin	Patchett	CR 98-08607 Att. POND/F5	Hung Case was formally dismissed on 3/2/99	Jury
2/1-2/3	**Leal**	Baca	Ireland	CR 98-07379 2 cts. Agg. DUI/F4	Guilty	Jury
2/2-2/4	**Slattery & Davis** Brazinskas *Garrison*	Dunevant	Adams	CR 98-13161 Unlawful Imprisonment/F6 with 1 prior on parole	Not Guilty	Jury
2/3-2/4	**Green** Yarbrough	Hilliard	Michael-Williams	CR 98-12417 Agg.Assault/F3D Kidnapping/F4D	Not Guilty Agg. Asslt. & Kidnap Guilty of Lesser Included Assault/M1	Jury
2/8-2/10	**Rock** Clesceri	Galati	Kramer	CR 98-02825 PODDFS/F2 with 1 prior; Forgery/F4 with 1 prior; Mscndct w/Wpn/F4 with 1 prior	Not Guilty of PODDFS; Guilty PODD; Guilty of Forgery; Guilty of Mscndct w/Wpns with 1 prior	Jury
2/8-2/9	**Klepper**	Akers	Hunt	CR 98-14688 POM/F6 PODP/F6	Guilty	Jury
2/10-2/12	**Ellig** Jones	Baca	Fuller	CR 98-09249 Armed Robbery/F2D	Guilty-Armed Robbery/F2 Non-dang.	Jury
2/11-2/11	**Howe**	Akers	Flores	CR 97-09363 Trfking Stln Prop/F3 Theft/F3	Mistrial	Jury
2/22-2/25	**Hernandez & Palmisano**	Reinstein	Tucker	CR 98-016621 Agg.Asslt/F3Dwith 2 priors on probation	Guilty of 1ct. Agg. Asslt. Guilty of Lesser Included Simple Asslt.	Jury
2/24-2/25	**Wall** Brazinskas	Dougherty	Doering	CR 98-08655 PODD/F4 PODP/F6	Guilty	Jury

(cont. on pg. 15) ☞

Group B

Dates: Start Finish	**Attorney** Investigator *Litigation Assistant*	Judge	Prosecutor	CR# and Charge(s)	Result: w/ hung jury, # of votes for not guilty/guilty	Bench or Jury Trial
1/21-2/3	**Park** Ames Linden	Arellano	Lehman/ Murry	CR 98-03536 1 Ct Drive-By Shooting/F2D 6 Cts Agg. Assault/F3D 1 Ct Agg. Assault/F3	Hung Jury (11-1 Not Guilty) Hung Jury (11-1 Not Guilty) Directed Verdict	Jury
1/28-2/1	**McCullough**	Ellis	Poster	CR 98-11165 2 Cts. Agg. DUI/F4	Guilty	Jury
2/1-2/3	**Washington** Erb	O'Toole	Kalish	CR 98-14517 1 Ct. Agg. Assault/F2D 1 Ct. Resisting Arrest/F6	Guilty of Agg. Assault, non-dangerous Guilty of Resisting Arrest	Jury
2/4-2/16	**Burns**	Hotham	McBee	CR 98-07237 1 Ct. Poss for Sale Crack Cocain/F2 1 Ct. Misconduct Inv. Weap./F4	Not Guilty	Jury
2/8-2/10	**Bublik & Petersen-Klein** Ames	Hotham	Rahi-Loo	CR 98-13132 Agg.Assault/F6	Guilty	Jury
2/10-2/17	**Walton** King	Cole	Luder	CR 98-13187 Armed Robbery/F2D	Not Guilty	Jury
2/16-2/17	**Peterson**	Hall	Myers	CR 98-14110 Disorderly Conduct/F6D	Hung Jury (7-1 to acquit)	Jury
2/17-2/22	**Park** Ames	Gottsfield	Bailey	CR 97-06669 2 Cts. Agg. Assault/F6	Mistrial	Jury
2/18-2/19	**Blieden**	Hotham	Bernstein	CR98-11753 2 Cts. Agg. Assault/F6 1 Ct. Intrfr. Judicial Proceedings/M1	Guilty	Jury
2/23-2/24	**Taradash**	Padish	McBee	CR 98-15748 Agg. Assault/F6	Guilty	Jury
2/26-2/26	**Ochs**	Ellis	Ryan	CR 98-11190 Assault/M1 Unlawful Flight from Law Enforcement Vehicle/F5	Guilty- Misd. Asslt. Not Guilty- Unlawful flight	Bench

(cont. on pg. 16) ☞

Group C

Dates: Start-Finish	**Attorney** Investigator *Litigation Assistant*	Judge	Prosecutor	CR # and Charge(s)	Result: w/ hung jury, # of votes for not guilty/guilty	Bench or Jury Trial
1//27-2/5	**Stein**	Dairman	Arnwine	CR 98-93696 Ct. 1 G/t Vehicle/ F3 Ct. 2 Possession of Burglary Tools /F6 Ct. 3 POM/ F6	Guilty Ct. 1 Guilty Ct. 2 Not Guilty Ct. 3	Jury
2/1-2/2	**DuBiel** Moller	Schneider	Ron Harris	CR 97-90014 Ct. 1 PODP/ F4 Ct. 2 PODD/ F6	Guilty Ct. 1 Guilty Ct. 2	Jury
2/1-2/25	**Ronan & Israel** Beatty *Rivera*	Aceto	Martinez	CR 97-90849 First Degree Murder (Death Penalty)	Guilty (Allegation of Death Penalty Was Dismissed at Jury Selection)	Jury
2/2-2/5	**Klobas**	Jarrett	Aubuchon	CR 98-92203 Ct. 1 Kidnap/ F2 Ct 2 Sexual Assault/ F2	Not Guilty Ct. 1 Guilty Ct. 2	Jury
2/3-2/5	**Gavin & Precht** Corbett *Turner*	Barker	Harris	CR 98-93131 Ct. 1 Armed Robbery/ F2D Ct. 2 Agg Assault/ F3D Ct. 3 Kidnap/ F2D	Not Guilty Armd Rbbry Guilty of Lesser: Robbery, F4, Guilty, F3D Not Guilty- Kidnap Guilty of Lesser: Unlawful Imprisonment F6	Jury
2/3-2/11	**Vaca** Beatty	Keppel	Flader	CR 98-91289 2 Cts. Drive by Shooting/ F2 5 Cts. Agg Assault/ F2 1 Ct. Misconduct Involving Weapons/ F4	Guilty on All Counts	Jury
2/11-2/16	**Rosales**	Jarrett	Carter	CR98-95152 Ct. 1 Disorderly Conduct/ F6 Ct. 2 Cruelty to Animals/poultry M1	Not Guilty Not Guilty	Jury
2/19	**Zazueta**	Pro Tem David Fletcher	Hamner	TR98-04646CR DUI/ M1	Guilty	Jury
2/22-2/24	**Sheperd** Thomas	Stephen Gerst	Goldstein	CR98-93184 2 Cts. Vulnerable Adult Abuse/ F3	Not Guilty	Jury
2/23-2/25	**Nermyr**	Keppel	Flader	CR98-93753 Burglary/ F2	Not Guilty	Jury
2/24-2/26	**Alcock & Ramos**	Howe	Contreras	CR98-95799 Ct. 1, Disorderly Conduct/ F6	Not Guilty	Jury
2/25-2/26	**Lachemann** *Rivera*	Gottsfield	Sampanes	CR98-95458 Ct. 1, PO/meth/ F4 Ct. 2, PO/cocaine/ F4 Ct. 3, PODP F6	Guilty All Counts	Jury

(cont. on pg. 17) ☞

Group D

Dates: Start-Finish	Attorney Investigator *Litigation Assistant*	Judge	Prosecutor	CR # and Charge(s)	Result: w/ hung jury, # of votes for not guilty/guilty	Bench or Jury Trial
1/26-2/2	**Bevilacqua**	D'Angelo	Larson	CR 98-04830A 1 Ct. Agg Assault, Dang./ F2 1 Ct. Armed Robbery Dang./F3	Guilty Armed Robbery non dangerous Guilty Agg. Assault dangerous	Jury
1/27-2/16	**Nickerson**	Katz	Amato	CR 97-13242 2 Cts. Child Molest/ F2 3 Cts. Sexual Cndct w/Minor/F2 1 Ct. Sex Abuse over 15/F3 1 Ct. Attmpt. Molest of child/F3 1 Ct. Attmpt. Sexual Condct w/Minor/F3	Guilty on 2 Cts. Of Child Molest/ F2 2 Cts. Sexual Guilty Not Guilty 1 Ct. Sex. Condct. w/Minor HUNG on Cts. 6-8.	Jury
2/1-2/5	**Elm**	Hotham	Lemke	CR 98-14962 2 Cts. Agg. DUI /F4	Not Guilty- Agg DUI Guilty of Misd. DUI	Jury
2/1-2/4	**Kibler**	Bolton	Greer	CR 98-10525 1 Ct. Agg. Assault/ F3D	Not Guilty	Bench
2/1-2/16	**Huls**	Kamin	Roberts	CR 98-11958 5 Cts. Sexual Cndct w/Minor/F2 1 Ct. Attpt/Com Sexual Cndct w/Minor/ F3	Guilty on 1 Ct. of Sexual Cndct w/Minor under 15, DCAC Guilty on 3Cts. Sexual Cndct w/Minor over 15/F2 Not Guilty on 1 Ct. Attpt/Sexual Cndct w/Minor under 15, DCAC Hung & Dimissed w/Prej. 1 Ct. Sexual Cndct w/Minor over 15.	Jury
2/2-2/3	**Stazzone** O'Farrell	J. Sheldon	Pacheco	CR 98-09819 1 Ct. Theft/F3, w/2 priors	Not Guilty- F3 Guilty of lesser, incl/F4	Jury
2/3-2/3	**Kibler**	D'Angelo	Alexov	CR 98-14982 1 Ct. Criminal Dam. w/prior/F3	Not Guilty	Bench
2/4-2/9	**Billar**	D'Angelo	Pacheco	CR 98-15977 1 Ct. Unauth. Use-Vehicle Transp./F6	Guilty	Jury
2/5-2/5	**Kibler**	McVay	Mount	CR98-00863MI 1 Ct. IJP/F1	Not Guilty	Bench
2/12 - 2/16	**Crews & Beckman** *Bradley*	Katz	Hammond	CR 98-05452 1 Ct. Agg. Assault/ F5 1 Ct. Agg. Assault/ F6	Not guilty	Bench
2/17-2/17	**Huls**	Mangum	Maasen	CR 98-10075B 1 Ct. Marij-Poss,Grw / F4	Dismissed with Prejudice	Jury
2/17-2/19	**Kibler** *O'Farrell*	Howe's	Cotter	CR 98-14127 1 Ct. G/T-Vehicle/F3 1 Ct. Traffic-Stolen Prop./F3 1 Ct. G/T-Vehicle/F6	Guilty on Count 1; Not Guilty on Counts 2 and 3.	Jury
2/22-2/24	**Zelms**	Kamin	Larson	CR 98-09480 1 Ct. Poss Meth/F4 1 Ct. Marij-Poss,Grow/F6 1 Ct. Poss Dg Paraph/F6	Guilty on all 3 counts	Jury
2/23-2/25	**Bevilacqua** O'Farrell	Mangum	Hammond	CR 98-14830 1 Ct. G/T of Vehicl/F3	Not Guilty	Jury
2/25-3/1	**Force**	Wilkinson	Neugebauer	CR 98-11064 1 Ct. Agg. DUI/F4	Guilty	Jury

(cont. on pg. 18) ☞

DUI Unit

Dates: Start-Finish	**Attorney** Investigator *Litigation Assistant*	Judge	Prosecutor	CR # and Charge(s)	Result: w/ hung jury, # of votes for not guilty/guilty	Bench or Jury Trial
2/4-2/9	**Carrion**	Mangum	Cappellini	CR 96-11249 1 Ct. Agg DUI/ F4	Not Guilty - Agg DUI Guilty DOSDP	Jury
2/9-2/9	**Timmer**	Baca	Smith	CR 98-09320 1 Ct. Agg DUI/ F4 with 2 prior Felonies	Not Guilty Agg.DUI Guilty Misdemeanor DUI Priors dismissed	Jury
2/22-2/23	**Wray & Van Wert**	Ellis	Ireland	CR 98-01572 1 Ct. Agg DUI/ F4	Not Guilty	Jury

Office of the Legal Defender

Dates: Start-Finish	**Attorney** Investigator *Litigation Assistant*	Judge	Prosecutor	CR # and Charge(s)	Result: w/ hung jury, # of votes for not guilty/guilty	Bench or Jury Trial
2/4-2/9	**Canby** Williams	Gerst	Keyt	CR 98-05268 Ct.1: Att. Drive-By Shooting/ F3D Ct.2: Agg. Asslt./F3D Ct.3: Conspiracy to Commit Assault/F3D	Mistrial	Jury
2/6-2/11	**Edwards** Pangburn	Paddish	Finch	CR 97-12964 Drive-By Shooting/F2D 2 cts. Agg.Asslt./F3D 1 ct. Agg. Asslt./F3D	 Guilty Guilty DV	Jury
2/23-2/26	**Funckes** Williams	Schneider	Davidon	CR 98-001096 4 Cts. Theft/F3 1 Ct. Theft/F5	1 Cl.5 Theft - Not Guilty 1 Cl.3 Theft - Dismissed prior to trial. 3 Cl.3 Theft - Guilty	Jury
2/16-3/1	**Parzych** Apple	Ishikawa	Rosales/ Evans	CR 97-93579 Ct.1: Child Molest/F2D Ct.2: Att.Child Molest/F3D	 Hung Jury DV	Jury
2/10-2/11	**Ivy**	Ishikawa	Stewart	CR 98-93100 Sale of Narcotic Drugs/F2	Guilty	Jury
2/4-2/19	**Steinle & Parzych** Horrall	Martin	Rizer	CR 98-17920 Conspiracy to Commit Murder/F1	Dismissed	Bench
2/10-3/1	**Cleary**	Kalish	Greer	CR 96-08382 Kidnapping/ F2D Cust. Interference/ F3D	Guilty	Jury